Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1868

NATIONAL GEOGRAPHIC SOCIETY, *Appellant*

v.

BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, *Appellee*

On Appeal from the Supreme Court of California

Jurisdictional Statement filed June 25, 1976

Probable Jurisdiction Noted October 12, 1976

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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In The

Supreme Court of the United States

October Term, 1975

No. 75-1868

National Geographic Society, *Appellant*

v.

Board of Equalization of the State of California,
Appellee

On Appeal from the Supreme Court of California

APPENDIX

Civil No. 577928

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO**

National Geographic Society, *Plaintiff*

v.

Board of Equalizatiion of the State of California,
Defendant

Relevant Docket Entries

4-18-67	Filed Complaint
6-30-67	Filed Answer of Defendant
8-16-73	Filed Memorandum that Civil Case is at Issue

9-14-73 Filed Stipulation of Facts

11-20-73 Filed Memorandum that Civil Case is at Issue

2-7-74 Filed Plaintiff's Memorandum in Support of Request for Refund and Declaration of Non-Liability for Use Tax

3-15-74 Filed Defendant's Trial Brief

4-1-74 Filed Plaintiff's Reply Brief in Support of Request for Refund and Declaration of Non-Liability for Use Tax

4-11-74 Trial

5-14-74 Filed and entered judgment that plaintiff have judgment against the defendant in the sum of Three Thousand Eight Hundred Sixty-Four and 33/100 Dollars and declaring plaintiff not liable for taxes as asserted by defendant.

5-15-74 Filed and entered amended judgment that plaintiff have judgment against the defendant in the sum of Three Thousand Eight Hundred Sixty-Four and 33/100 Dollars.

7-17-74 Filed Notice of Appeal and Notice to Prepare Clerk's Transcript

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In The Court of Appeal
First Appellate District
State of California

Civil No. 35629

8-15-74 Filed Clerk's Transcript on Appeal

9-6-74 Filed Record on Appeal

10-3-74 Filed Appellant's Opening Brief

11-2-74 Filed Respondent's Brief

11-20-74 Filed Appellant's Closing Brief

3-26-75 Filed Opinion and Judgment affirming the judgment below

4-10-75 Filed Petition for Rehearing and for Modification of Opinion

4-18-75 Filed Answer in Opposition to Petition for Rehearing and for Modification of Opinion

4-25-75 Filed Order denying petition for rehearing

In the Supreme Court
of the State of California, In Bank

No. S.F. 23295

5-5-75 Filed Petition for Hearing

5-14-75 Filed Opposition to Petition for Hearing

6-4-75 Filed Order granting hearing

5-1-76 Filed Opinion and Judgment reversing and remanding to Court of Appeal

6-17-76 Filed Notice of Appeal to the Supreme Court of the United States

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

(TITLE OMITTED IN PRINTING)

Complaint

(FILED APRIL 18, 1967)

Plaintiff complains of defendant and for cause of action alleges:

I.

Plaintiff is now, and at all times mentioned herein has been a nonprofit, educational and scientific institution incorporated in and resident of Washington, D.C.

II.

Defendant is now, and at all times mentioned herein has been the duly qualified agency of the State of California having the power and duties of administering the Sales and Use Tax Law. The Attorney General of California has an office in the City and County of San Francisco.

III.

This action is brought by plaintiff against defendant pursuant to the provisions of the Revenue and Taxation Code of California for the recovery of use taxes, with interest thereon, erroneously and illegally collected by defendant from plaintiff.

IV.

Plaintiff, on or about November 1, 1965, responding to demands by defendant and acting under duress of threatened legal action for enforcement of defendant's demands, filed sales and use tax returns, number SN-OH-01-901200, for the two calendar periods of April 1 - June 30, 1964 and July 1 - September 30, 1964, and under protest paid the sums as shown in said returns, respectively, of $1,354.69 and $1,153.20, totaling $2,507.89.

Further, acting under said duress, plaintiff on or about February 26, 1966 paid under protest to defendant the additional sum of $1,340.05 demanded by defendant as interest and penalties of $424.45 on said state use taxes allegedly due on the aforesaid returns, and local use taxes of $841.43 and interest of $74.17 allegedly due on the same transactions covered by said returns.

V.

On or about September 28, 1966 plaintiff duly filed a claim for refund of the aforesaid state and local use taxes, penalties and interest totaling $3,847.94, with interest as allowed by law, a copy of which claim is attached to this

complaint as Exhibit A and by this reference is made a part hereof as if set forth herein.

VI.

More than six months have elapsed since the filing of plaintiff's said claim, without defendant having mailed notice of action thereon.

VII.

Defendant, by "Notice of Determination Sales and Use Tax" dated September 7, 1966, has given notice of state and local use taxes allegedly due, with interest and penalties, totaling $178,332.87 for the period 9-11-57 to 6-30-66. A copy of said notice is attached hereto as Exhibit B and by this reference is incorporated herein as part hereof.

Plaintiff, by petition duly filed with defendant on or about October 1, 1966, petitioned for redetermination of said determination, but plaintiff has not received notice in any manner of action thereon by defendant.

VIII.

The transactions on which defendant assessed said state and local use taxes and made its said determination of which notice was given as set forth in foregoing paragraph VII, were shipments into California of articles sold at plaintiff's office in Washington, D.C. on orders received there directly from California resident members of National Geographic Society and not solicited, received by, or known to any representative of plaintiff in California.

Plaintiff states that it maintains two offices in California (one in San Francisco and one in the Los Angeles area) but avers that said offices are restricted to solicitation of advertising for plaintiff's scientific and educational journal, published monthly and exempt from California sales or use tax; that said advertising is entirely unrelated to the articles on which the defendant has assessed said state

and local use taxes; and said offices are wholly without authority to sell or offer any said articles for sale or to solicit or receive or transmit orders in any manner, except for advertising as aforesaid. Plaintiff does not have any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of plaintiff or any subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property.

WHEREFORE plaintiff prays judgment:

1. That defendant refund to plaintiff the sum of $3,847.94 with interest as allowed by law;

2. That plaintiff is not liable in any way for taxes, penalty or interest, or any part thereof, as asserted by defendant in the Notice of Determination, Sales and Use Tax, dated September 7, 1966, account number SN-OH-01-901200;

3. That plaintiff is not a retailer engaged in business in this state within the meaning of the Sales and Use Tax Law, and defendant is without jurisdiction to assess, levy or collect sales or use taxes or to require plaintiff to file returns with respect to articles sold outside California and delivered to members of National Geographic Society in this state on orders sent to plaintiff's office or offices outside California; and

4. For such other and further relief as is just and proper in the premises.

NATIONAL GEOGRAPHIC SOCIETY

By /s/ MELVIN M. PAYNE
Executive Vice President Plaintiff

/s/ BERNARD S. DOBELL
Attorney for Plaintiff

EXHIBIT A

September 27, 1966

State of California
Board of Equalization
1020 N Street
Sacramento, California

Account No. SN-OH-01-901200
Claim for Refund of Use Tax

Gentlemen:

National Geographic Society claims a refund in the amount of $3,847.94, with interest as allowed by law, representing use taxes erroneously and illegally imposed on it and collected by the State Board of Equalization, as follows:

	Quarter	Tax	Interest	Penalty	Total
State:	4/1-6/30/64	$1,354.69			
		)	$172.02	$252.43	$2,932.34
	7/1-9/30/64	1,153.20			
Local:					
	4/1-9/30/64	841.43	74.17		915.00
					$3,847.94

The foregoing use taxes were levied by the Board on sales made outside California, and liability was asserted against the National Geographic Society under the purported authority of Section 6206 of the California Sales and Use Tax Law. The Society filed returns for the periods indicated and paid the taxes under protest. (See letter dated October 27, 1965).

In claiming this refund the National Geographic Society contends it is not a "retailer engaged in business in this state" within said Section 6203. The Society is chartered in Washington, D.C., under the laws of the United States, as a nonprofit scientific and educational organization for increasing and diffusing geographic knowledge

and promoting research and exploration. It reports its described activities in a monthly Journal, which is exempt from tax under Section 6362 of said Law. Incidental to the publication of its Journal and to its said activities, it develops such materials as maps, atlases and globes which it makes available for purchase at its Washington, D.C. office by its members.

The Society has two offices in California solely for solicitation of advertising for the Journal.* There is no office or representative of the Society in the state for the purpose of delivering, selling or taking orders for any tangible personal property, except as part of advertising.

Against this background, reference is made to the portion of Section 6203 which the Board's administrative office has cited as pertinent:

"6203. Collection by retailer. • • •

" 'Retailer engaged in business in this state' as used in this and the preceding section means and includes any of the following:

"(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.

"(b) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property."

---

* One office is in Beverly Hills, the other in San Francisco. Briefly in the period from July 1963 to June 1964 nominal sales of maps, etc. were made inadvertently. Returns have been made and sales taxes paid thereon.

Analysis of the quoted provisions reveals that the functions contemplated obviously relate to sales. In subdivision (a) the emphasis is on facilities for administration, distribution, storage and display of personal property for sale. In subdivision (b) the concern is with the representatives engaged in selling, soliciting sales or delivery of personal property.

Considering that the sole function of the California offices and representatives of the Society is to solicit advertising for the exempt periodical, it becomes apparent that activities attributable to the Society in this state are not within the intended coverage of Section 6203. There is no connection between its in-state activities and out-of-state sales. Accordingly, no jurisdictional nexus to support imposition of liability on the Society for California use taxes is present.

Further, if it is assumed for purposes of analysis that Section 6203 is intended to apply to the existing facts, imposition of use tax liability on the Society still must fail. In such case the attempt to include the Society by arbitrary definition, unsupported by jurisdictional facts, would be an invalid abuse of statutory authority.

There being no in-state activity connected with the out-of-state sales, the attempted imposition of use tax liability on the Society is erroneous, arbitrary and invalid. Either to collect from the Society or force it to assume the burden of collecting the tax without just compensation would work a deprivation of property without due process of law, and would impose an undue burden on interstate commerce, in violation of the United States Constitution, Amendment 14, Section 1, and Article 1, Section 8, Clause 3.

On the facts and Constitutional authority outlined above, the National Geographic Society submits it is not liable, directly or indirectly, for California use taxes, and claims refund of the sums paid, with interest as provided by law.

The Society further requests a hearing in connection with the processing of its claim.

Respectfully,

NATIONAL GEOGRAPHIC SOCIETY
By /s/ BERNARD DOBELL
Attorney of Record

BT-401-BC2 (1-63)

STATE OF CALIFORNIA

BOARD OF EQUALIZATION—Department of Business Taxes

COMBINED STATE AND LOCAL SALES AND USE TAX RETURN

Due on or Before .....

Period for April 1—June 30, 1964

Partial Period .....

Mail to:
State Board of Equalization
P.O. Box 1799
Sacramento 8, Calif.

☐ Type of Account

Business Code –

Area Code—5977

Account Number—SN-OH-01-901200

Name—National Geographic Society

Business Address—1145 17th Street, N.W.

City—Washington, D. C. 20036

Reporting Basis—

STATE SALES AND USE TAX

1. *Total Sales* (Mail order sales to Wash. D.C. from residents of California) (enter "none" if you made no sales)		$45,156.36
2. *Add*—Purchase price of tangible personal property purchased without sales or use tax and used for some purpose other than resale (enter "none" if you have nothing to report)		None
3. *Total* (Line 1 plus Line 2)		45,156.36
DEDUCT EXEMPT TRANSACTIONS		
4. Sales to other retailers for purposes of resale	$	
5. Sales of food products for human consumption		
6. Sales to the United States Government		
7. Sales of motor vehicle fuel taxable under MVF License Tax Law		
8. Cash discounts allowed on taxable sales		
9. Credits for taxable merchandise returned		
10. Sales in interstate or foreign commerce to out-of-state consumers ..		
11. Amount of reimbursement for sales tax *if* included in Line 1		
12. Other exempt transactions ..... (See instruction 12)		
13. *Total transactions exempt from State Sales and Use Tax* (Lines 4 through 12)	$	None
14. Amount on which *State* Sales and Use Tax applies (Line 3 minus Line 13)		45,156.36
15. *Amount of State Tax* (3% of Line 14)		$ 1,354.69

LOCAL SALES AND USE TAX

16. Amount on which State Tax applies (Enter amount from Line 14) .....$ _____
17. *Add*—Purchase price of goods not included in Line 2 on which only the 3% State Tax was paid and the goods were used in a county having the state-administered 1% local tax .. _____
18. *Total* (Line 16 plus Line 17) ..... _____

DEDUCT TRANSACTIONS EXEMPT FROM LOCAL TAX ONLY (See instruction 19—Attach schedule)

19. a. .....$ _____
    b. ..... _____
20. *Total Transactions Exempt from Local Sales and Use Tax* ..... _____
21. Amount on which *Local* Tax applies (Line 18 minus Line 20) ..... _____
22. *Amount of Local Tax* (1% of Line 21) .....$ _____

STATE AND LOCAL TAX PAYMENT

23. *Total State and Local Tax Due and Payable* (Line 15 plus Line 22) .....$ 1,354.69
24. Penalty of 10% plus interest at ½% per month or part of a month must be added unless payment is made on or before the due date shown above. Penalty Interest
25. *Total Amount Due and Payable* (Line 23 plus any late filing charges—Line 24) .....$ 1,354.69

I hereby certify that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

Signature of Taxpayer or Agent
Sign here
/s/ C. VERNON SANDERS
Title—Associate Secretary

Make check or money order payable to
State Board of Equalization

NATIONAL GEOGRAPHIC SOCIETY
Sixteenth and M Street, N.W.
Washington, D.C. 20036

No. 98938 Voucher No. 47209

State Board of Equalization
P.O. Box 1799
Sacramento 8, Calif.

The attached check is in settlement of items listed below.

If incorrect, please return this voucher with check.

Date—October 27, 1965 *Acct. No.*—2,235

Description—State Sales and Use Tax (mail order sales to Washington, D.C. from residents of California) for period April 1—June 30, 1964

Gross—1,354.69 *Deductions*—[0] *Balance*—1,354.69

* In the certified record before this Court, there appears below the above form a photocopy of a check from the National Geographic Society to the State Board of Equalization in the amount of $1,354.69, on which check it is indicated "Paid Under Protest."

BT-401-BC2 (1-63)

STATE OF CALIFORNIA

BOARD OF EQUALIZATION—Department of Business Taxes

COMBINED STATE AND LOCAL SALES AND USE TAX RETURN

Due on or Before .....
Period for July 1—Sept. 30, 1964

Partial Period . ...

Mail to:
State Board of Equalization
P.O. Box 1799
Sacramento 8, Calif.

☐ Type of Account

Business Code— Area Code—5977

Account Number—SN-OH-01-901200

Name—National Geographic Society
Business Address—1145 17th Street, N.W.
City—Washington, D. C. 20036

Reporting Basis—

STATE SALES AND USE TAX

1. *Total Sales* (Mail order sales to Wash. D.C. from residents of California) (enter "none" if you made no saes) $38,440.12
2. *Add*—Purchase price of tangible personal property purchased without sales or use tax and used for some purpose other than resale (enter "none" if you have nothing to report) None
3. *Total* (Line 1 plus Line 2) 38,440.12

DEDUCT EXEMPT TRANSACTIONS

4. Sales to other retailers for purposes of resale ..... $ _____
5. Sales of food products for human consumption ..... _____
6. Sales to the United States Government ..... _____
7. Sales of motor vehicle fuel taxable under MVF License Tax Law .... _____
8. Cash discounts allowed on taxable sales ..... _____

9. Credits for taxable merchandise returned ..... _____
10. Sales in interstate or foreign commerce to out-of-state consumers .. _____
11. Amount of reimbursement for sales tax *if* included in Line 1 ..... _____
12. Other exempt transactions ..... _____ (See instruction 12) ..... _____
13. *Total transactions exempt from State Sales and Use Tax* (Lines 4 through 12) ..... $ None
14. Amount on which *State* Sales and Use Tax applies (Line 3 minus Line 13) 38,440.12
15. *Amount of State Tax* (3% of Line 14) ..... $ 1,153.20

LOCAL SALES AND USE TAX

16. Amount on which State Tax applies (Enter amount from Line 14) ..... $ _____
17. *Add*—Purchase price of goods not included in Line 2 on which only the 3% State Tax was paid and the goods were used in a county having the state-administered 1% local tax .. _____
18. *Total* (Line 16 plus Line 17) ..... _____

DEDUCT TRANSACTIONS EXEMPT FROM LOCAL TAX ONLY (See instruction 19—Attach schedule)

19. a. ..... $ _____
    b. ..... _____
20. *Total Transactions Exempt from Local Sales and Use Tax* ..... $ _____
21. Amount on which *Local* Tax applies (Line 18 minus Line 20) .....
22. *Amount of Local Tax* (1% of Line 21) ..... $ _____

STATE AND LOCAL TAX PAYMENT

23. *Total State and Local Tax Due and Payable* (Line 15 plus Line 22) ..... $ 1,153.20

24. Penalty of 10% plus interest at ½% per month or part of a month must be added unless payment is made on or before the due date shown above. Penalty Interest
25. *Total Amount Due and Payable* (Line 23 plus any late filing charges—Line 24) ..... $ 1,153.20

I hereby certify that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.

Signature of Taxpayer or Agent
Sign here
/s/ C. VERNON SANDERS
Title—Associate Secretary

Make check or money order payable to
State Board of Equalization

NATIONAL GEOGRAPHIC SOCIETY
Sixteenth and M Street, N.W.
Washington, D.C. 20036
No. 98939 Voucher No. 47210

State Board of Equalization
P.O. Box 1799
Sacramento 8, Calif.

The attached check is in settlement of items listed below.
If incorrect, please return this voucher with check.

Date—October 27, 1965 *Acct. No.*—2,235

Description—State Sales and Use Tax (mail order sales to Washington, D.C. from residents of California) for July 1—September 30, 1964

Gross—1,153.20 *Deductions*—[0] *Balance*—1,153.20

* In the certified record before this Court, there appears below the above form a photocopy of a check from the National Geographic Society to the State Board of Equalization in the amount of $1,153.20, on which check it is indicated "Paid Under Protest."

REMITTANCE ADVICE

National Geographic Society
1145 17th Street, N.W.
Washington, D.C. 20036

Account No. SN-OH-01-901200

Date—February 3, 1966

DEMAND FOR IMMEDIATE PAYMENT SALES AND USE TAX

Demand is hereby made for the immediate payment of the delinquent amounts due from you as shown below:

(Additional monthly interest $..... will accrue after .....)

		Amount		
Previous Delinquent Balance	*Tax*	*Interest*	*Penalty*	*Total*
4-1-64 to 6-30-64 (1)		102.83	137.11	239.94
7-1-64 to 9-30-64 (2)		69.19	115.32	184.51
AMOUNT DUE		172.02	252.43	424.45

These delinquency charges have accrued because the tax, due (1) 7-31-64 and (2) 10-31-64, was not paid until 10-27-65.

Other amounts billed: Form BT-432 dated 2-3-66 for $915.15.

The entire amount shown above is delinquent and should be paid immediately. Make remittance payable to State Board of Equalization, remit to nearest District Office, and enclose this copy.

REMITTANCE ADVICE

National Geographic Society
1145 17th Street, N.W.
Washington, D.C. 20036

Account No. SN-OH-01-901200

Date—February 3, 1966

NOTICE OF DETERMINATION SALES AND USE TAX

You are hereby notified of an amount of tax, interest and penalty due from you as shown below:

(Additional monthly interest $4.21 will accrue after 2-28-66. Additional penalty $84.14 if not paid by 3-5-66)

		Amount			
Period	*Measure of Tax*	*Tax*	*Interest*	*Penalty*	*Total*
4-1-64 to 9-30-64	84,152.68	841.43	74.17		915.60

Local tax not paid with returns.

Make remittances payable to State Board of Equalization.

In order to insure proper credit to your account please return this copy with your remittance.

NATIONAL GEOGRAPHIC SOCIETY
Sixteenth and M Street, N.W.
Washington, D.C. 20036

No. 2962 Voucher No. 3847

State Board of Equalization
Department of Business Taxes, P.O. #1799
Sacramento, California 95808

The attached check is in settlement of items listed below.
If incorrect, please return this voucher with check.

Date—March 14, 1966 *Acct. No.*—2,235

Description—State Sales & Use Tax (Sales made within the State of California) Amount of Local Tax and interest—4-1-64 to 9-30-64—85,142.68

Gross—915.60 *Deductions*—[0]

Date—March 14, 1966 *Acct. No.*—2,235

Description—Delinquent balance accrued because the tax, due (1) 7-31-64 and (2) 10-31-64, was not paid until 10-27-65

Gross—424.45 *Deductions*—[0] *Balance*—1,340.05

• In the certified record before this Court, there appears below the above form a photocopy of a check from the National Geographic Society to the State Board of Equalization in the amount of $1,340.05.

October 27, 1965

State of California,
Board of Equalization,
1020 N Street,
Sacramento, California.

Re: Protest of Use Tax Payment

Gentlemen:

The National Geographic Society forwards herewith sales and use tax returns for the second quarter of 1964, with payment in the amount of $16.39 for sales made within the State of California.

Also enclosed are sales and use tax returns for sales made without the State of California during the second quarter of 1964 and the third quarter of 1964 with payments in the amounts of $1,354.69 and $1,253.20, respectively. These payments are made only in conformance with our agreement of April 22, 1965, and in no way indicate acquiescence.

The National Geographic Society believes the use taxes on sales without the State of California during the second and third quarters of 1964 are illegal and void for the reason that the State of California is without jurisdictional power to require National Geographic Society to collect use taxes on its sales of tangible personal property made in Washington, D. C., through the United States mails, to its members resident in California.

The National Geographic Society is a non-profit, educational and scientific institution incorporated in and resident of Washington, D. C. While two offices are maintained in the State of California, in Los Angeles and San Francisco, these offices during the periods in question were engaged solely in the solicitation of advertising for the "National Geographic Magazine," a wholly unrelated enterprise exempt from the use tax by Section 6362 of the California

Sales and Use Tax Law. Such offices cannot provide the State of California with the jurisdictional nexus required to compel the National Geographic Society to collect use taxes on sales made without the state in interstate commerce, and any liability imposed on National Geographic Society for failure to do so deprives the Society of its property without due process of law in violation of Article XIV, Section 1, of the Constitution of the United States.

Moreover, collection of such tax would constitute a considerable burden on the staff of the National Geographic Society, and any statute delegating the State's tax collection responsibilities without just compensation is a deprivation of property without due process of law, in violation of Article XIV, Section 1, of the Constitution of the United States, and is an undue burden upon interstate commerce, in violation of Article 1, Section 8, Clause 3, of the Constitution of the United States.

For these and other reasons, the National Geographic Society should not be considered a "retailer engaged in business in this State" in accordance with Section 6203 of the California Sales and Use Tax Law.

Therefore, the National Geographic Society protests the payment of use taxes for sales made without the State of California during the second quarter of 1964 and the third quarter of 1964 in the amounts of $1,354.69 and $1,153.20, respectively.

Respectfully submitted,

NATIONAL GEOGRAPHIC SOCIETY
By /s/ MELVIN M. PAYNE
Executive Vice President.

EXHIBIT B

DISTRICT OFFICE COPY No. 2

National Geographic Society
1145 17th Street, North West
Washington, D.C. 20036

Account No. SN-OH-01-901200

Date—September 7, 1966

NOTICE OF DETERMINATION SALES AND USE TAX

You are hereby notified of an amount of tax, interest and penalty due from you as shown below:

(Additional monthly interest $680.60 will accrue after 9-30-66. Additional penalty $23,611.94 if not paid by 10-7-66)

Period	*Measure of Tax*	*Amount*			
		Tax	*Interest*	*Penalty*	*Total*
9-11-57 to 6-30-66					
State Tax	3,570,293	107,108.79	23,979.07	10,177.47	141,265.33
Local Tax	2,901,064	29,010.84	5,333.67	2,723.23	37,067.54
TOTAL		136,119.43	29,312.74	12,900.70	178,332.87

Penalty of 10% has been added because of failure to file returns for the periods 9-11-57 to 3-31-64 and 10-1-64 to 6-30-66.

cc: New York.

September 26, 1966

State of California,
Board of Equalization,
1020 N Street,
Sacramento, California 95808

Re: SN-OH-01-901200

Gentlemen:

Referring to your notice of determination dated September 7, 1966, National Geographic Society protests the assessment as erroneous and, pursuant to Section 6561 of the Sales and Use Tax Law, requests redetermination that the Society is not liable for the indicated tax, interest or penalty, or any part thereof.

The Society is a nonprofit institution located outside California and engaged in scientific and educational activities incidental to which it publishes a journal and provides related materials for its members only. It in *fact* is not a retailer engaged in business in California and is not subject to the Sales and Use Tax Law.

The attempt by arbitrary definition to bring the Society within the orbit of the law is essentially a "bootstrap" operation which Constitutionally is invalid as a deprivation of property without due process and as an undue burden on interstate commerce. (U. S. Constitution, Art. 1, Sec. 8, Clause 3; Amendment 14, Sec. 1).

The Society requests a hearing in connection with the redetermination, as provided in Section 6562 of said law.

Respectfully,

NATIONAL GEOGRAPHIC SOCIETY

/s/ MELVIN M. PAYNE

By: MELVIN M. PAYNE
Executive Vice President

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

Account SN-OH-01-901200

In the Matter of the Petition of
NATIONAL GEOGRAPHIC SOCIETY
1145 - 17th Street, N. W.
Washington, D. C.

for redetermination of liability determined under the Sales and Use Tax Law.

Reporter's Transcript of Hearing

Date: May 24, 1967

Place: 1020 N Street
Sacramento, California

Honorable Paul R. Leake, Honorable Richard Nevins, Honorable George R. Reilly and Honorable John W. Lynch present; Honorable Houston I. Flournoy absent.

HONORABLE PAUL R. LEAKE, Chairman and Member, Third Equalization District: You may proceed with the case.

MR. E. H. STETSON, Tax Counsel, Board of Equalization: Mr. Chairman, Members of the Board, this is the hearing on the petition for redetermination filed by the National Geographic Society, Washington, D. C. We are all familiar with the National Geographic Society, particularly with respect to its monthly National Geographic Magazine which has been a popular magazine for many, many years.

We are concerned here, not with the magazine because that is exempt from sales tax as a monthly periodical, what we are concerned with here are sales made by the National Geographic Society of various bulletins, maps, atlases, globes, and books, which do not qualify under the periodical exemption.

(Honorable George R. Reilly, Member, First Equalization District, joined the other Members in the hearing room at this time.)

The liability in question, total with interest and penalty, is $182,416.45. This goes back to 1957 because the Society did not file returns and therefore the 8-year limitation period is involved.

Now the liability was based on estimates because records were not made available to the auditor, although requests were made to examine the records. The taxpayer has however indicated, at least for purposes of this hearing, this determination, they accept the auditor's estimated figures of total sales.

I might mention at this time that not long ago—a matter of a week or two—this same National Geographic Society filed a refund action in superior court in San Francisco to recover taxes paid with returns for, I believe, two quarters, the second and third quarters of 1964. This action is pending; it's just been filed and has been of course referred to the Attorney General. The issues involved are the same, I believe; and for that reason a request was made for a postponement of this hearing. And I think that request is going to be made by the representatives of the National Geographic Society now.

The staff did not feel in a position to recommend it because the amount sued for is $3,847, which is nominal compared to the amount under this petition for redetermination of $182,416.45. The staff did not feel it could recommend postponement for that reason. However the Board may see it differently.

Now the issues here—the one basic issue is the obligation of the National Geographic Society to collect use tax with respect to these globes, books, maps, and other things that I described a few moments ago. The contention of the petitioner is that it is not engaged in business in this state

within the meaning of Section 6203 of the Sales and Use Tax Law and therefore is not under an obligation to collect the tax. However, the company did maintain during the period involved here two offices in California.

Now the employees at these locations we were told were engaged in soliciting advertising for the National Geographic Magazine, not soliciting sales of merchandise of the type in question here. However, we do have some information that occasionally orders for tangible personal property were solicited by them. In any event, we feel that the maintaining of a place of business here is enough and that it does not have to be maintained for the purpose of promoting these specific sales in question.

The language of the statute is that a retailer is engaged in business in this state if he is maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business. The staff believes that such a place of business was maintained here and that is in itself sufficient.

Now in *People* v. *West Publishing Co.*, 35 Cal. 2d 80, a somewhat similar situation arose with respect to a law book publishing company that maintained offices for purposes in addition to or other than the solicitation of mail order business. The court pointed out that the mail order business was part of the total activity in the state and that they were properly required to collect the use tax and relied to some extent upon the United States Supreme Court decision in *Sears Roebuck* and *Montgomery Ward* which held a mail order business was simply part of the totality of the overall operation and held liable to collect the use tax.

Now I don't think any discussion of this case would be complete without my mentioning the very recent decision that came down just a week ago Monday from the United

States Supreme Court in *National Bellas Hess* case. Now in that case we had a mail order house that had no place of business in the taxing state; all of its solicitations were by mail; all of its sales were by mail. Illinois nevertheless contended that it was required to collect the tax. The Supreme Court in the five—six-to-three decision held against the right of Illinois to collect the tax.

And no doubt it might be argued that that is in point here; but we see a decided difference. In the *National Bellas Hess* case, the Court drew what it called a sharp distinction between decisions upholding the tax, the requirements to collect the tax, and those going the other way holding—striking out the requirement to collect the tax. It referred to the sharp distinctions which these and other decisions have drawn between mail order houses like Sears, with retail outlets, solicitors, or property within a state, and those who do no more than communicate with customers in this state by mail or common carrier as part of a general interstate business.

We think that this case before you now falls on the other side of the sharp distinction, because here the Society does more than merely communicate with customers by mail order or common carrier. It has these places of business in this State. It did have them. It solicited sales. It made sales. It maintained a small stock in California. True, that may not have been directly related to the mail order business, but as we read the statute it is enough to fall within the terms of the statute. I don't think that this is within the restrictions of the *Bellas Hess* case.

Now, the three gentlemen are here representing National Geographic, Mr. Dobell, Attorney, and Mr. Hanson, I believe, and officers of the company. Mr. Bernal Dobell, the general counsel, and Mr. Sanders here——

MR. ARTHUR B. HANSON, General Counsel, National Geographic Society: I am; he is associate secretary.

MR. STETSON: Gentlemen, you may address the Board with respect to the postponement, or whichever way you wish.

MR. DOBELL: Mr. Chairman and Members of the Board, I am Bernal Dobell, the attorney of record in this matter. Mr. Arthur B. Hanson, general counsel of the National Geographic Society, is here and will make the presentation.

MR. HANSON: Mr. Chairman, gentlemen, it is a mixed pleasure to be with you. We find your sunshine is far better than what we have had back east recently, but, on the other hand, we don't like to contest with the State of California or anyone else a problem involving us; but that's life.

Our position on this is very simple, and we'll state to you factually what it is after I first say that we are a little puzzled as to why we should have a hearing here at all. We filed an action in Superior Court on April 18. This has been forwarded through the proper processes, the offices here, and we understand the Attorney General now has it and is preparing his answer.

And as Mr. Stetson said this morning—or this afternoon—exactly the questions involved here would be decided by the issues in that case, but the staff's problem was that we had paid two quarters and had not paid the $180,000 that they feel we should pay.

I would only point out, that's a two-edged sword. If we are right, and pay you $180,000, you pay us 6 percent interest when the court orders it returned to us. And reading the newspaper earlier, I was impressed that Governor Reagan feels the State is in need of more revenue. Secondly, if we don't pay you and we lose, the National Geographic Society isn't going to fade away. We recognize we will have to pay you interest plus penalty if we lose the case.

Therefore we renew our motion for a continuance at this time and state to the Board that if it does not desire to grant the continuance that we are prepared to discuss the case in toto; and we are prepared to put Mr. Sanders, who is an associate secretary of the Society, one of its senior officers, who in effect operates as the controller of the Society, on to discuss those factual matters which would be important. So if it would be proper for the Board at this time—I don't know how you would want to handle it—if you would like to consider our motion at this time before we go further, we are prepared to work it that way.

CHAIRMAN LEAKE: What is your pleasure on the motion, gentlemen?

HONORABLE RICHARD NEVINS, Vice Chairman and Member, Fourth Equalization District: Mr. Hanson, as I understand, the Attorney General doesn't like to have a situation where a small amount of tax swings the big tax. In other words, he feels it all ought to be in one bundle; and so for those reasons, I think we ought to deny the motion for a continuance and—or at least take it under consideration and hear the factual matter on the issues involved in the case here before us.

HONORABLE GEORGE R. REILLY, Member, First Equalization District: Is it true that the case that is pending would be the determining factor in the matter that is before us today?

MR. STETSON: I understand that it would. We don't question the fact that the same issues are present in this law suit.

Now, as I say, the only reason we hesitated at the staff level to recommend this postponement was because of the large amount involved here and because of the fact that it might take a year or two, I suppose, for the court decision involving $3,800 to become final. That would mean holding up $182,000 for a considerable length of time.

MR. WILLIAM T. DENNY, Assistant Executive Secretary, Business Taxes, Board of Equalization: With appeals, it could go on for years.

MR. REILLY: The publisher of the National Geographic Magazine is a well-known organization as such—or the material they publish. It has been around for a long time. Why is it we began to audit just recently? They have been doing business this way for years and years and years.

MR. STETSON: We started this audit some years ago. Mr. Kerrigan can fill you in. We were not allowed access to the records.

MR. HANSON: November of '63 was the first request made of us, and at that time we told Mr. Kerrigan's office, "We cannot believe we are subject to the tax; and then we found that during a period of August 2, 1963 to May 6, 1964, that these two advertising offices, one in California—one in San Francisco and one in Beverly Hills down in the Los Angeles area—had had a limited number of maps, globes and magazines in the offices there as an accommodation to the members who would look up the address in the phone book and come back and not want to wait two or three weeks to get something from Washington.

My point here, Mr. Reilly, is very simple. We have executed the appropriate waivers with the State since this question arose, in no way endeavoring to apply the statute of limitations, which we could have done back in '64 against some of these items. We have signed all the waivers they have asked us to sign. We are prepared to sign any other waivers, but we think it is a needless process to hold court hearings on the very subject which you would be considering here today. But we are prepared to go ahead factually if that be the Board's desire.

What would happen were the Board to make a determination against us is we would go through the same procedure. We would have to then hold up the court proceed-

ing to wait until our claim for refund had been acted upon by you gentlemen. And if you acted expeditiously on it and denied it, then we would consolidate in the court that particular amount with the one we here have. If there is some question of the Society not being able to pay, there would be some purpose perhaps in——

MR. REILLY: Is there any question that the State would be in jeopardy?

MR. STETSON: I don't think so; do you, Mr. Kerrigan?

MR. H. P. KERRIGAN, Out-of-State District Tax Administrator, Board of Equalization: No, I do not.

MR. HANSON: I might state, the Society's budget for this year is about $50 million.

MR. REILLY: I am inclined to go along with the petitioner on the basis—or the case based upon the statement of Mr. Stetson that to the best of your knowledge that the settling of the other case would determine the collectability of this tax, plus the interest they would have to pay. They realize that? They have been informed? If there was jeopardy, that is different.

MR. DENNY: I think the case could go on for years, probably into the United States Supreme Court. It might be many, many years.

MR. REILLY: If they want to pay 6 percent interest—that's a good company. They pay their bills. And 6 percent interest, that is investing the taxpayers' money rather wisely.

MR. DENNY: Mr. Hanson's not wanting to proceed, apparently 6 percent to them isn't too much.

MR. HANSON: We think 6 percent in a tax organization is important if we are paying the money. We don't believe we owe it, and we do not believe we owe it—and actually the two quarters we filed were done in accordance with my last visit to Sacramento a couple of years ago.

MR. NEVINS: Well, Mr. Chairman, all I know is I got involved in a situation just like this where the taxpayers owed a lot of money. I said, "Why don't you pay some tax and get a claim for refund in the courts?" And the Attorney General's Office blew up on that because they didn't want to have a bunch of petitions lying around the Board and then go out and decide a small amount of money in court in a legal issue. I don't think the Attorney General's office would object if you paid one month's tax if the issue was prospective, that would be different; but we are dealing with past tax.

MR. HANSON: You have made a statement and you say, "Where the tax is owed." We say the tax isn't owed. We paid one quarter where it had been clearly agreed that there were no sales made by these officers in California to anyone and another quarter where there had been some sales that amounted to the great sum of $600 or $700. It might be of interest to you to know in the entire period in question these officers made sales of less than 300 items, as best we can figure it, in a state whose population is something in excess of 19 million. This was not a sales activity.

MR. NEVINS: Mr. Hanson, it just happens that one of my activities on the Board has been focusing on taxation of multistate businesses, of which this is one. And the most restrictive legislation we have had to deal with is in Congress right now, HR 2158, and even under that which restricts the reach of our tax considerably even where the *Bellas Hess* case being decided against the tax we would be able to collect tax.

MR. HANSON: I don't read their hearings that way. I testified in them.

MR. NEVINS: The only way you could avoid it prospectively is if you took the two offices out of California—which is obviously what you would do. If you left them in

the State, under the Willis Bill as it is now wrotten, we could still assess the tax. As I understand the Bill, you would have a place of business.

MR. HANSON: Congressman Willis disagrees with you.

MR. NEVINS: His staff switched around. He doesn't have the same staff now. He's changed his mind on a lot of it. I am convinced we could collect the tax if we had two officers in the State.

Now there is no reason in the world for you to have offices in California. I am sure you would draw them out in order to avoid the tax.

MR. HANSON: There is some reason to have it for the activity which you have expressly by statute exempted. This is one of our points in this case. The periodical was exempt under 6362 of your Code and of your regulations here. And in addition to that, these advertising sales offices are solely a part of the magazine operation, and the *American Oil Company* case decided by the Supreme Court in the spring of 1965 flatly held that this is a disassociated type of activity and refused to tax the American Oil Company. It involved the State of Idaho at that time.

Although it involved excise tax, as opposed to use tax, the language of that case is significant and we state very clearly to the Board and will to the courts when the time comes that the combination of the *American Oil Company* case and the *Bellas Hess* case, and with the factual picture here—which is one you have not had decided anywhere before. And this is one of the problems; never before has someone come to you or to your taxing authority and raised the point that an exempt purpose in the State in this fashion where you have specifically exempted a purpose and the sole activity of that office in the State relates to the exempt purpose under your own statute—I don't think it has been raised before. We have found no area where it has—that you have no authority to impose a tax where

you have specifically exempted that activity and that activity is not engaged in sales activities of the type that you are attempting to collect on.

MR. STETSON: Well, I might add there——

MR. HANSON: We would be happy if the Board were convinced of that.

MR. STETSON: There has been no matter which has arisen as high as the Board level or the court level, but the staff in its everyday activity in answering hundreds of inquiries has consistently taken the position in this situation to require collection of the tax. Maybe some people have paid and on that basis, maybe some have not. We wrote in 1964 and that was simply a restatement of the previous views of our legal staff that under the plain language of 6203 this company maintained a place of business here—and it did admittedly. That's all the statute requires.

The statute may be unconstitutional. Until it is held unconstitutional, I don't think we can assume it is. We are not embarking on something brand new here. This is a continuation of our consistent views.

MR. REILLY: I was going to say, Mr. Stetson, it seems reasonably fair to me where the taxpayer is being assessed a tax and we have a determination here and the law provides penalties—the 6 percent interest in case the courts determine through litigation that the tax is due the State—there is a penalty involved. No one is in jeopardy. Presumably no one questions the company's financial standing. I think the other case should go forward. Taxpayers shouldn't be forced by this Board to pay tax where there is a legal question and they are willing to litigate it at high expense to themselves—this litigation is costly—and if they lose the litigation, they know then that there is a 6 percent interest charge which I would cite as a penalty.

By litigating, they will determine it for us and the State of California in future cases and all similar type cases.

They are not only rendering a service to the people of California—if they are forced to pay, they will pay plus interest. I see no reason to insist, where no one is questioning the economic stability or ability to pay—if the tax is not due, they should never have had to pay or be put to the costly litigation. And I think it is fair for them—their request is a fair request.

MR. STETSON: Maybe I should speak. For myself I am not objecting at all to continuation or postponing. I have only stated that the staff did not feel it was its province to recommend it under the circumstances. We are not opposing the motion to postpone.

MR. REILLY: Do you object to my suggestion that the Board Members in view of possible litigation—or knowing that when the tax is paid eventually 6 percent interest will be charged against them, or the State of California, if they go to court and they win the litigation and tax is not due—and you do not question, as you said a minute ago, the stability, financial stability of the company—do you object to my making a motion that this matter go over until the other case is determined if they want to ride along at 6 percent interest and take that chance? If they win, they win. If they lose the litigation, they will lose it.

MR. STETSON: I do not object.

MR. REILLY: But to force the taxpayer to pay this tax when there is litigation involved—or will be litigation involved—I think it is an unfair burden. And I think we are not being fair with the taxpayer involved. Whether they be out of state or in California, they are still part of the great government of the United States, and I think they are entitled to a reasonable request. And I so move, Mr. Chairman.

HONORABLE JOHN W. LYNCH, Member, Second Equalization District: Mr. Chairman, I think the Attorney General would be just as happy if we kept out of it. I agree with

Mr. Reilly that instead of us finding one way or the other—because the courts are going to make the final decision, and the final decision is going to rule whatever we do. I am inclined to second Mr. Reilly's motion that we postpone or take it under submission, whatever it would be.

MR. STETSON: May I make one comment, not in opposition but to clarify the point Mr. Nevins raised a while ago, and that was whether the Attorney General was happy with our keeping large amounts under consideration while a matter is being litigated involving much smaller amounts. I don't know how the Attorney General personally feels about it or his staff; I would point out this, there is a general State policy expressed in the section which prohibits writs of mandate, and so forth, to prevent or enjoin collection of the tax. Those provisions are drastic. You do not enjoin collection of a tax or try to get declaratory judgment that the tax is invalid. Those have been thrown out of court here in California. We had one case in which $100 was paid against some $7,000 or $8,000 liability and the suit was brought to recover. In the court's opinion on that suit it weighed whether it was proper for the person to sue for that $100 and if the Board denied the claim, which it did in that case, which was the only thing the taxpayer could do—but that action did not, should not, indeed could not, prevent the State from proceeding to collect the balance of the liability because that would in effect be violating State policy as expressed in the statute against injunctions, writs of mandate and other extraordinary process to prevent or enjoin the collection of a tax.

I am giving you that information, not because I want to use it as an argument against the motion, but I want you to be aware of that circumstance which has some relevance to this case.

MR. HANSON: I would point out, if I may, in that case as Mr. Stetson has just stated the Board had acted on the $100 request. Here some six months had passed after we

had filed our request, and under the statute, as you gentlemen know, if the Board doesn't act within a six months' period, then we might file in court within 30 days. This is what we did. So that the Board had not made a determination, in one sense; in another sense, they had already made a determination on the amounts we had paid and it amounted to I think several thousand dollars; wasn't it, Mr. Sanders?

MR. C. VERNON SANDERS, Associate Secretary, National Geographic Society: We paid $3,800.

MR. HANSON: Covering these two periods, so we have paid this in. There has been a six months' passage of time where the Board did not consider the matter, for whatever reason, In turn, we in timely fashion, as soon as the six months passed, filed a suit in court. So I think that the factual situation is quite different.

CHAIRMAN LEAKE: Ready for the question? No further comments? You have heard the motion; all in favor say aye.

MR. REILLY: Aye.

MR. LYNCH: Aye.

CHAIRMAN LEAKE: Aye.

MR. NEVINS: I would like to be recorded as a no.

MR. REILLY: For the record, I suggest you call the roll.

MR. NEVINS: No.

MR. LYNCH: Aye.

CHAIRMAN LEAKE: Aye.

MR. REILLY: Aye. (Mr. Flournoy absent).

MR. HANSON: Thanks very much, Mr. Chairman, gentlemen.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

(TITLE OMITTED IN PRINTING)

Answer

(FILED JUNE 30, 1967)

Defendant, as an answer to the complaint on file herein, admits, denies and alleges as follows:

I

Defendant has no information or belief sufficient to enable it to answer the allegations contained in paragraph I and basing its denial thereon denies each and every allegation contained therein.

II

Defendant denies each and every allegation contained in paragraph III save and except defendant admits that this is an action for the recovery of use tax and interest paid by plaintiff to defendant.

III

Defendant denies each and every allegation contained in paragraph IV save and except defendant admits and alleges as follows:

That on or about October 27, 1965, plaintiff filed with defendant California sales and use tax returns for the second and third quarters of 1964 and submitted with said returns the sums of $1,354.69 and $1,153.29 respectively;

That the amounts paid with the returns were not correct in that they did not include local tax or delinquency charges which had accrued because of the late filing of the returns;

That on February 3, 1966, defendant issued a Notice of Determination for local tax of $841.13 plus interest of $74.17 for a total of $915.60;

That on February 3, 1966, the Board issued a Demand for Immediate Payment for interest of $172.02 and penalty of $252.43 for a total of $424.45 which had accrued by virtue of the late filing of the returns; and

That on February 28, 1966, the amounts set forth in said Notice of Determination and Demand for Immediate Payment were paid by plaintiff to defendant.

IV

Defendant denies each and every allegation contained in paragraph V save and except defendant admits that on September 28, 1966, plaintiff filed a Claim for Refund with defendant for the sum of $3,847.94.

V

Answering paragraph VII defendant admits that there is now pending before the State Board of Equalization a Petition for Redetermination of plaintiff's sales and use tax liability for the period of September 11, 1957, through June 30, 1966, but defendant denies that the correctness or legality of the Determination now pending before the State Board of Equalization may properly be considered in this action.

VI

Defendant has no information or belief sufficient to enable it to answer paragraph VIII, and, basing his denial thereon, denies each and every allegation contained therein save and except that defendant admits that plaintiff made retail sales of tangible personal property to residents of the State of California, and that plaintiff maintains offices in California and is doing business in this State.

WHEREFORE, defendant prays that plaintiff take nothing by this action and that defendant be awarded his costs of suit and such other and further relief as to this Court seems just and equitable.

Dated: June 27, 1967.

THOMAS C. LYNCH,
Attorney General

ERNEST P. GOODMAN
Assistant Attorney General

/s/ RALPH J. COWING,
Deputy Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

(TITLE OMITTED IN PRINTING)

Stipulation of Facts

(FILED SEPTEMBER 14, 1973)

IT IS HEREBY STIPPULATED by and between the parties hereto by their respective counsel that for the purpose of trial of the above entitled case the facts hereinafter stipulated are true and correct and may be treated by this court as facts proven in open court.

This stipulation shall be the sole and exclusive evidence before the court in the trial of this matter; however, the parties reserve the right to amend this stipulation of facts by further and additional stipulations.

It is agreed, however, that this stipulation shall not be construed as a concession by either party of the relevancy or materiality of any of the facts stipulated herein and the parties hereto expressly reserve the right to argue the relevancy or materiality of any of the facts stipulated herein to be true.

1. National Geographic Society (hereinafter "the Society") is a non-profit scientific and educational organization incorporated in 1888 under the laws of the District of Columbia with its administrative offices located at 17th and M Streets, N. W., Washington, D. C.

2. The State Board of Equalization (hereinafter "the Board") is the agency of the State of California empowered and required to assess and collect liabilities arising under the Sales and Use Tax Law of California.

3. The Society is exempted as an organization from the payment of federal income taxes under Internal Revenue Code section 501(c)(3) as amended.

4. The stated objective for organization of the Society is "the increase and diffusion of geographic knowledge." Since 1890 the Society has supported exploration and research projects dedicated to increasing man's knowledge of earth, sea, sky and the universe. The scientific and educational information it obtains is made available to its members and subscribers through its monthly National Geographic Magazine (hereinafter "the Magazine"), its offerings of maps, atlases, globes, books and through school bulletins, television programs and research reports.

5. The Magazine, the official journal of the Society, is furnished only to members of the Society except for subscribing schools, libraries, bookdealers and corporations which represent less than five percent (5%) of total circulation.

6. Membership in the Society is open to all persons. The majority of such members joined the Society because they desired to obtain the Magazine. Applications for membership must be completed and mailed to the Society's headquarters in the Washington area. Members presently pay $7.50 a year for membership in exchange for which they receive one year's subscription to the Magazine. Members do not become entitled by virtue of their membership status to any other publications or articles of merchandise free of charge (except six month indexes); however, they do have the opportunity to purchase items published by the Society from its offices in Washington, D. C.

7. Non-member subscribers to the Magazine (the schools, libraries, bookdealers and corporations referred to in paragraph 5 above) must pay $9.00 a year and are primarily restricted to institutions that are not eligible for individual membership in the Society.

8. As of June, 1972, there were approximately 872,000 member subscriptions and 21,000 non-member subscriptions to the Magazine in California.

9. The National Geographic Magazine is exempted from the California Sales and Use Tax as a "Periodical" under California Sales and Use Tax Law § 6362.

10. The Society advertised offerings of maps, atlases, globes and books in the Magazine and by announcements mailed to members and subscribers during all periods relevant hereto. To take advantage of these offerings, an order form enclosed with the mail announcements or an order coupon in the Magazine is removed, completed and mailed to the administrative offices of the Society in Washington, D. C. Deliveries of such publications are made through the mail either directly from the Society's Washington and/or Maryland offices. Payment for the merchandise ordered is either cash with order or by a mailed billing following the purchaser's receipt of the merchandise. Finally, a small volume of merchandise is sold directly over the counter in the Washington, D. C. offices.

11. Although these offerings of maps, atlases, globes and books are made only in the Magazine and in mail announcements, anyone who removes an order coupon from the Magazine may order and receive such merchandise.

12. Since 1956 the Society has maintained two offices in California. One such office has been on the 10th floor of the 31 story Russ Building in San Francisco. Until 1965 the other was on the second floor of a two-story building at 8693 Wilshire Boulevard in Beverly Hills. Each office was staffed by a manager and secretary.[1]

13. During the period from August 1, 1963 through May 6, 1964, maps, atlases, globes and books of the type de-

[1] In June, 1965, the Los Angeles office was relocated to the eighteenth floor of the 25-story California Savings and Loan Association Building located at 5670 Wilshire Boulevard, Beverly Hills. From July 1967 to June 1972, the Los Angeles office has been staffed by two salesmen and two secretaries. The San Francisco office did not relocate. In October 1968 it added a salesman. A second secretary was added in January, 1970.

scribed in paragraph 9 above were sold to individuals over the counter from the San Francisco and Los Angeles offices of the Society totalling a sales' value as follows:

San Francisco	*Los Angeles*
$679.20	$2,161.85

14. In comparison with local sales as tabulated in the foregoing schedule, the shipment of maps, atlases, globes and books exclusive of the Magazine to California Society members and residents from orders received at the Washington, D. C. office during the same period totalled a sales' value of $452,470.00.

15. With regard to the sales of maps, atlases, globes and books from the San Francisco and Los Angeles offices of the Society as described in paragraph 13 above, the offices did not verify whether or not a prospective purchaser was a member of the Society and sales could have been made to individuals who were neither members nor subscribers.

16. The Society paid to the Board state and local *sales* taxes plus appropriate penalties and interest upon sales totaling $546.20 described in paragraph 13 above during the period April 1, 1964 to May 6, 1964. The Society does not seek refund of these taxes, penalties and interest.

17. At all times other than during the period from August 1, 1963 to May 6, 1964, no sales were made from the San Francisco and Los Angeles offices of the Society and said offices were again restricted in authority and function to solicitation of advertising for the Magazine.

18. During the period from April 1, 1964 to September 30, 1964 the Society made sales of maps, atlases, globes and books to California residents from its Washington, D. C. offices in the manner described in paragraph 10 above in the sum of $83,596.48.

19. Based upon the sales described in paragraph 18 above, the Society paid under protest a use tax collection liability as follows:

Period	Measure of Tax	Collection Liability With State and Local Use Tax Interest and Penalties
4/1/64-6/30/64	$45,156.36	$2,085.90
7/1/64-9/30/64	38,440.12	1,752.86
	$83,596.48	$3,838.76

20. Two typical issues of the Magazine are attached hereto. These issues exemplify the Magazine during the period in question and today. The offerings of maps, atlases, globes and books in these issues and the order forms which constitute a part of such offerings are typical of the advertised offerings described in paragraph 10 above.

21. The Society has exhausted its administrative remedies and has timely brought this action for refund of the payments described in paragraph 19 above.

22. It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that this action may be brought to trial at any time prior to August 1, 1974 and that the Board hereby waives the provisions of Code of Civil Procedure section 58 up to and including July 31, 1974.

DATED: September 14, 1973.

For the
NATIONAL GEOGRAPHIC SOCIETY

/s/ ARTHUR B. HANSON
/s/ BERNAL E. DOBELL

EVELLE J. YOUNGER,
Attorney General of the State of California

ERNEST P. GOODMAN,
Assistant Attorney General

/s/ PHILIP M. PLANT,
Deputy Attorney General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

(TITLE OMITTED IN PRINTING)

Amended Judgment

(FILED MAY 15, 1974)

The above-entitled matter came on regularly for trial on April 11, 1974 at 10:00 a.m., plaintiff appearing by its attorneys, Arthur B. Hanson of Hanson, O'Brien, Birney, Stickle & Butler, and Eugene C. Crew of Broad, Khourie & Schulz, and defendant appearing by its attorney, Philip M. Plant, Deputy Attorney General. The parties tried this action before the Court, without a jury, and upon a stipulation of facts. Based thereon, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That plaintiff have judgment against defendant as prayed;

2. That defendant refund to plaintiff the sum of $3,864.33, together with interest thereon as provided by law as follows: (a) at the rate of 6% on the sum of $2,524.28 from November 1, 1965 to the date of entry of judgment; (b) at the rate of 6% on the sum of $1,340.05 from February 28, 1966 to the date of entry of judgment; and (c) at the legal rate of 7% on the total amount of the judgment from the date of entry thereof.

Dated: May 14, 1974.

/s/ ROBERT J. DREWES
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

(TITLE OMITTED IN PRINTING)

Notice of Appeal

(FILED JULY 17, 1974)

NOTICE IS HEREBY GIVEN that the Board of Equalization of the State of California, defendant, hereby appeals to the Court of Appeal of the State of California, First Appellate District from the judgment entered on May 14, 1974 in Judgment Book Volume A468, page 23, as amended by the amended judgment entered on May 15, 1974 in Judgment Book Volume A468, page 28, and the whole of the said judgments.

DATED: July 17, 1974.

EVELLE J. YOUNGER
Attorney General

ERNEST P. GOODMAN
Assistant Attorney General

/s/ PHILIP M. PLANT
Deputy Attorney General

Attorneys for Defendant

COURT OF APPEAL
FIRST APPELLATE DISTRICT
STATE OF CALIFORNIA

NATIONAL GEOGRAPHIC SOCIETY, *Plaintiff-Respondent*

v.

BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA,
Defendant-Appellant

No. 35629

The opinion of the Court of Appeal of the State of California, First Appellate District, dated March 26, 1975, affirming the judgment of the trial court, is unofficially reported at 121 Cal. Rptr. 77 (1975), and is printed as Appendix B of the Jurisdictional Statement.

SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

NATIONAL GEOGRAPHIC SOCIETY, *Plaintiff-Respondent*

v.

BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA,
Defendant-Appellant

No. S.F. 23295

The opinion of the Supreme Court of California, dated April 1, 1976, reversing the judgment of the Court of Appeal, is reported at 547 P.2d 458 and 128 Cal. Rptr. 682, and is printed as Appendix A of the Jurisdictional Statement.

SUPREME COURT OF THE UNITED STATES

No. 75-1868

NATIONAL GEOGRAPHIC SOCIETY, *Appellant,*

v.

BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA,
Appellee

Order Noting Probable Jurisdiction
Filed October 12, 1976

In this case probable jurisdiction is noted. The Chief Justice took no part in the consideration of this matter.